

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 30TH JANUARY 2007 / 10TH MAGHA 1928

Crl.Rev.Pet.No. 345 of 2007()

CRA.865/2006 of SESSIONS COURT, ERNAKULAM
CC.1875/2003 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI

REVN. PETITIONERS: APPELLANT/ACCUSED

1. K.K.ANTONY, MANAGING PARTNER,
KALENKERIL, FINANCIAL ENTERPRISES,
KALANKERIL HOUSE, KODAMTHURUTH.
2. K.K.KUNJUMON, MANAGING PARTNER,
KALENKERIL FINANCIAL ENTERPRISES,
KALANKERIL HOUSE, KODAMTHURUTH.

BY ADV. SRI.NIDHI BALACHANDRAN

RESPONDENTS: RESPONDENTS/COMPLAINANT AND STATE

1. M.G.SREEKUMAR KAMATH,
MAVUNKAL HOUSE, SOUTH CHELLANAM P.O.,
KOCHI.
2. STATE OF KERALA, REPRESENTED BY ITS
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SHRI C.K. SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 30/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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Dated this the 30th day of January, 2007

ORDER

Petitioners are accused in C.C. No. 1875 of 2003 on the file of the Judicial First Class Magistrate No.I, Kochi. Petitioners were found guilty of an offence punishable under Section 138 of the Negotiable Instruments Act, convicted and sentenced to undergo simple imprisonment for two weeks and to pay a compensation of Rs.15,000/- each and in default of payment of compensation to undergo simple imprisonment for another two weeks. Petitioners filed Criminal Appeal No.865 of 2006 before the Sessions Court, Ernakulam, challenging the conviction and sentence imposed by the learned Magistrate. Learned Sessions Judge confirmed the conviction, but modified the sentence. Challenging those conviction and sentence, this Criminal Revision Petition is filed.

2. First respondent filed the criminal complaint alleging that he was a subscriber in a Chitty conducted by the petitioners and he bid the Chitty for Rs.70,000/- in the 12th instalment. Petitioners issued Exhibit P1 cheque for the said amount. When

the cheque was presented for payment, the same was dishonoured and returned for want of sufficient funds in the account maintained by the petitioners with the Bank. It was averred that petitioners failed to honour payment in spite of notice. Hence the complaint.

3. Learned Magistrate found the petitioners guilty of the offence alleged, convicted and sentenced as aforesaid. The appeal filed against the said conviction and sentence was also dismissed subject to modification of sentence. Hence this Criminal Revision Petition.

4. Evidence on record shows that first respondent was a subscriber to the Chitty conducted by the petitioners. It also shows that he bid the Chitty in the 12th instalment for an amount of Rs.70,000/- and petitioners issued Exhibit P1 cheque for the said amount. But the material on record shows that first respondent remitted only 12 instalments at the rate of Rs.1,500/- totalling to Rs.18,000/-. But the courts below while fixing the compensation directed the petitioners to pay Rs.30,000/-. Material on record also shows that cheque was issued by the

petitioners in discharge of a legally recoverable debt and when the same was presented for payment it was dishonoured and returned for want of sufficient funds in the account maintained by the petitioners with the Bank. So the findings of the courts below that petitioners are guilty of the offence punishable under Section 138 of the Negotiable Instruments Act does not call for any interference. The sentence and compensation awarded are also reasonable. But considering the facts and circumstances of the case, I am of the view that three months' time can be granted to the petitioners to appear before the Magistrate for receiving the substantive sentence and to pay the compensation awarded.

5. In the result, the Criminal Revision Petition is disposed of as follows:

Conviction and sentence imposed on the revision petitioners are confirmed. But they are given a period of three months from today to appear before the Magistrate to receive the substantive sentence of imprisonment till rising of the court and make payment of the compensation awarded. In case petitioners commit default in complying with the above directions, learned

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Magistrate can execute the sentence as ordered after the expiry of three months from today.

K. PADMANABHAN NAIR, JUDGE.

VSV

K. PADMANABHAN NAIR, J.

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ORDER

4TH JANUARY, 2007